

**UNITED STATES PATENT AND TRADEMARK OFFICE**

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES
BOX INTERFERENCE, WASHINGTON, D.C. 20231

MAILED**MAR 20 2008****PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

Applicants: Heuer et al.
Application No.: 08/888,609
Filed: 07/07/97
For: Microbicidal Compositions

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,609.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

/ss/ Michael P. Tierney
MICHAEL P. TIERNEY
Administrative Patent Judge

INTERFERENCE DIGEST

Interference No. 105,609

Paper No.

Name: Lutz Heuer et al.

Serial No.: 08/888,609

Patent No.

Title: Microbicidal Compositions

Filed: 07/07/97

Interference with McDade

DECISION ON MOTIONS

Administrative Patent Judge, _____ Dated, _____

FINAL DECISION

Board of Patent Appeals and Interferences, _____ Dated, _____

Court, _____ Dated, _____

REMARKS

This should be placed in each application or patent involved in interference in addition to the interference letters.

Mail Stop Interference
P.O. Box 1450
Alexandria Va 22313-1450
Tel: 571-272-4683
Fax: 571-273-0042

Filed: 20 March 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MARK DANIEL McDADE

Junior Party
(U.S. Patent 5,874,456),

v.

LUTZ HEUER, PETER WACHTLER,
MICHAEL SCHWAMBORN, MARTIN KUGLER,
AND HANS-ULRICH BUSCHHAUS,

Senior Party
(U.S. Application 08/888,609).

Patent Interference No. 105,609 (MPT)
(Technology Center 1600)

DECLARATION - Bd.R. 203(b)¹

- 1 Part A. Declaration of interference
- 2 An interference is declared (35 U.S.C. § 135(a)) between the above-
- 3 identified parties. Details of the application(s), patent (if any), reissue application

¹ "Bd.R. x" may be used as shorthand for "37 C.F.R. § 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

(if any), count(s) and claims designated as corresponding or as not corresponding to the count(s) appear in Parts E and F of this DECLARATION.

Part B. Judge managing the interference

Administrative Patent Judge Michael P. Tierney has been designated to manage the interference. Bd. R. 104(a).

Part C. Standing order

A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this DECLARATION. The STANDING ORDER applies to this interference.

Part D. Initial conference call

A telephone conference call to discuss the interference is set for **2:00 p.m. on May 9, 2008** (the Board will initiate the call).

No later than four business days prior to the conference call, each party shall file and serve (SO ¶¶ 10.1 & 105) a list of the motions (Bd. R. 120; Bd. R. 204; SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

A sample schedule for taking action during the motion phase appears as Form 2 in the STANDING ORDER. Counsel are encouraged to discuss the schedule prior to the conference call and to agree on dates for taking action. A typical motion period lasts approximately eight (8) months. Counsel should be prepared to justify any request for a shorter or longer period.

1 Part E. Identification and order of the parties

2 Junior Party

3 Named inventors: MARK DANIEL McDADE, BOULDER, CO

4 Involved Patent: U.S. Patent 5,874,456, issued February 23, 1999, based
5 upon U.S. Application 08/446,097, filed May 19, 1995.

6 Title: Fungicidal Compositions

7 Assignee: Novartis AG

8 Senior Party

9 Named Inventors: LUTZ HEUER, KREFELD, GERMANY

10 PETER WACHTLER, KOLN, GERMANY

11 MICHAEL SCHWAMBORN, KOLN, GERMANY

12 MARTIN KUGLER, LEICHLINGEN, GERMANY

13 HANS-ULRICH BUSCHHAUS, KREFELD,

14 GERMANY

15 Involved Application: U.S. Application 08/888,609, filed July 7, 1997

16 Title: Microbicidal Compositions

17 Assignee: Lanxess Deutschland GMBH

1 The senior party is assigned exhibit numbers 1001-1999. The junior party is
2 assigned exhibit numbers 2001-2999. Bd. R. 154(c)(1); SO ¶ 154.2.1. The senior
3 party is responsible for initiating settlement discussions. SO ¶ 126.1.

4
5 Part F. Count and claims of the parties

6 Count 1

7 A method according to claim 1 of U.S. Patent 5,874,456.

8 The claims of the parties are:

9 McDade, U.S. Patent 5,874,456: 1-3

10 Heuer, U.S. Application 08/888,609: 12 and 16

11
12 The claims of the parties which correspond to Count 1 are:

13 McDade, U.S. Patent 5,874,456: 1-3

14 Heuer, U.S. Application 08/888,609: 12 and 16

15
16 The claims of the parties which do not correspond to Count 1, and therefore
17 are not involved in the interference, are:

18 McDade, U.S. Patent 5,874,456: None

19 Heuer, U.S. Application 08/888,609: None

1 The parties are accorded the following benefit for Count 1:

2 McDade:²

3 i) U.S. Application 08/012,550, filed February 2, 1993.

4 Heuer:

5 i) U.S. Application 08/552,566, filed October 13, 1995;

6 ii) U.S. Application 08/338,356, filed November 14, 1994;

7 iii) U.S. Application 08/128,450, filed September 28, 1993;

8 iv) DE 42 33 337.7, fled October 5, 1992.

9

² McDade's involved '456 patent claims 35 U.S.C. §119 benefit of GB 9202378, filed February 5, 1992. (See '456 patent, front page). The USPTO has been unable to determine whether McDade perfected its claim to foreign priority benefit of the GB application. As explained in the Order accompanying this Declaration, the USPTO has been unable to locate McDade's application files. Further, a review of the USPTO's Patent Application Locating and Monitoring system failed to demonstrate that McDade perfected its claim to foreign priority benefit of the GB application. Accordingly, no benefit is accorded to the GB application at this time.

Part G. Heading to be used on papers

The following heading must be used on all papers filed in this interference,
see SO ¶ 106.1.1:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MARK DANIEL McDADE
Junior Party
(U.S. Patent 5,874,456),

v.

**LUTZ HEUER, PETER WACHTLER,
MICHAEL SCHWAMBORN, MARTIN KUGLER,
AND HANS-ULRICH BUSCHHAUS,**
Senior Party
(U.S. Application 08/888,609).

Patent Interference No. 105,609 (MPT)
(Technology Center 1600)

1 Part H. Order form for requesting file copies
2 When requesting copies of files, use of SO Form 4 will greatly expedite
3 processing of the request. Please attach a copy of Parts E and F of this
4 DECLARATION with a hand-drawn circle around the patents and applications for
5 which a copy of a file wrapper is requested.

/Michael P. Tierney/
Administrative Patent Judge

Enc:

Copy of STANDING ORDER
Copy U.S. Patent 5,874,456
Copy of claims of 08/888,609

Revised 3 January 2006

cc (via overnight delivery):

Attorney for McDADE:

Michael P. Morris
NORVATIS CORPORATION
Patent Department
564 Morris Avenue
Summit, NJ 07901

Attorney for HEUER:

NORRIS, McLAUGHLIN & MARCUS, PA
875 Third Avenue
18th Floor
New York, NY 10022